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Crl.O.P.(MD)No.3236 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.3236 of 2018

and

Crl.M.P(MD) Nos.1509 and 1510 of 2018

Infantraj

... Petitioner/Accused No.5

Vs

M.Nagavel

... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records relating to the private complaint in C.C.No.319 of 2017 on the file of the learned Judicial Magistrate, Nilakottai, quash the same insofar as the petitioner concern.

For Petitioner : Mr.M.Subash Babu

For Respondent : Mr.K.M.Gopinath

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.319 of 2017 pending on the file of the learned Judicial Magistrate, Nilakottai. for the offences under Sections 120-B, 294(b), 420, 497, 506(ii) and 511 of IPC.

2.The learned Counsel appearing for the petitioner would submit that the petitions is innocent and he has not committed any offence as alleged by the prosecution. Without any base, a case came to be registered a case for the offences under Sections 120-B, 294(b), 420, 497, 506(ii) and 511 of IPC., as against the petitioner and taken cognizance for in C.C.No.319 of 2017 Hence he prayed to quash the same.

3.Heard Mr.D.Ramesh Kumar, learned counsel appearing for the petitioner and Mr.K.M.Gopinath learned counsel for the respondent.

4.There are totally four accused in this case, in which the petitioner herein is arrayed as A5. The case was registered for the offences under Sections 120-B, 294(b), 420, 497, 506(ii) and 511 of IPC. It is also seen from the statement recorded under Section 161 Cr.P.C that there are evidences to attract the offence under Sections 120-B, 294(b), 420, 497, 506(ii) and 511 of IPC.. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court



of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** - **Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.**, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the



ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

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5. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.319 of 2017 pending on the file of the learned Judicial Magistrate, Nilakottai. Hence this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition in Crl.M.P(MD)No.1510 of 2018 is ordered and Crl.M.P(MD) No.1509 of 2018 is closed. However, the trial court is directed to complete the trial within a period of six months from the date of receipt of a copy of this Order.

6. Further, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. The petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS-)

To

The Judicial Magistrate,
Nilakottai.

+1 CC to M/s.K.M.GOPINATH, Advocate(SR-90166[F] dated 27/09/2019)
+1 CC to M/s.M.SUBASH BABU, Advocate(SR-90300[F] dated 30/09/2019)

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and

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dss

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